

## Internal Revenue Service

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:EC  
PLR-151876-07

Date:  
May 02, 2008

Date 1	=
X	=
Employer	=
Plan	=
Date 2	=
y	=
Date 3	=
z	=

Dear :

This is in response to your letter dated November 6, 2007, requesting consent to amend an election you made under § 83(b) of the Internal Revenue Code (IRC § 83). You represent the following facts.

On Date 1, you received X shares of Employer common stock in connection with services you provide to Employer. On Date 2, you filed an election under IRC § 83(b) with respect to the stock. Your election lists the value of the stock as \$y per share on the date of grant. By letter dated Date 3, Employer informed you that the value of the stock was actually \$z per share on the date of grant. Your November 6, 2007, letter requests consent to amend your IRC § 83(b) election to reflect this different value.

Under IRC § 83(a), if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, then the excess of the fair market value of the property (determined without regard to any restriction other than a restriction which by its terms will never lapse) as of the first day that the transferee's rights in the property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over the amount (if any) paid for the property, is included in the service provider's gross income for the taxable year

which includes that day.

IRC § 83(b) and §1.83-2(a) of the Income Tax Regulations permit the service provider to elect to include in gross income the excess (if any) of the fair market value of the property at the time of transfer (determined without regard to any lapse restriction, as defined in § 1.83-3(i)) over the amount (if any) paid for the property, as compensation for services. If this election is made, the substantial vesting rules of IRC § 83(a) and the regulations thereunder do not apply to the property, and, assuming there is no compensatory cancellation of a nonlapse restriction, any subsequent appreciation in the value of the property is not taxable as compensation to the service provider.

Under IRC § 83(b)(2), an election made under IRC § 83(b) must be made in accordance with the regulations thereunder and must be filed with the Internal Revenue Service no later than 30 days after the date that the property is transferred to the service provider. IRC § 83(b)(2) and §1.83-2(f) of the Income Tax Regulations provide that an election under IRC § 83(b) may not be revoked without the consent of the Commissioner of Internal Revenue.

The facts described in your submission indicate that the stock you received was not subject to a substantial risk of forfeiture when it was transferred to you on Date 1. In addition, your election was not filed within 30 days of Date 1. Therefore, your election under IRC § 83(b) was without consequence. The stock was taxable to you under IRC § 83(a) on Date 1.

Except as specifically ruled above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other IRC provision. The ruling is directed only to the taxpayer requesting it. IRC § 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter should be attached to any of your income tax returns to which it is relevant.

The rulings contained in this letter are based upon information and representation submitted by you and accompanied by a properly executed penalty of perjury statement. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely yours,

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KENNETH M. GRIFFIN  
Senior Technician Reviewer  
Executive Compensation Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt and  
Government Entities)